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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 28, 1995

Ms. Kathleen M. H. Wallman
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street N.W., Room 500
Washington, D.C. 20554

Re: GTE California Incorporated
Transmittal Nos. 874, 909, 918; CC Docket No. 94-81
Cerritos, California

Dear Ms. Wallman:

As you know, in combination with its Transmittal No. 873/893, GTE California Incorporated ("GTE") proposes in the referenced tariff filing to abrogate its private contracts with Apollo CableVision, Inc. ("Apollo") concerning use of the cable television system now operating in Cerritos, California. On September 21, 1995, pursuant to the Common Carrier Bureau's August 14, 1995 Supplemental Designation Order (DA95-1796) ("SDO"), GTE submitted a "Supplemental Rebuttal" in which certain new matters were raised, and in which plainly misleading assertions were advanced. Because of the importance of the legal issues involved, and given the impact the rulings in this docket will have, both on Apollo and on Cerritos cable subscribers, the Bureau should take the following facts and comments into account in evaluating GTE's Supplemental Rebuttal (hereinafter cited "S.R., p. ___").

I. GTE Has Failed To Demonstrate That Its Proposed Rates Are Nondiscriminatory

In its Supplemental Designation Order, the Bureau stated, in relevant part:

> GTECA argues that the rates charged to Service Corp. and Apollo are equivalent if they are compared using an 18.9 percent cost of capital over 15 years. There is no evidence in the record, however, that 18.9 percent is a reasonable below-the-line, pre-

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> tax cost of capital. In the Cerritos Tariff Order, we directed GTECA to explain why it is reasonable to base the rates in Transmittal 873 on an 18.9 percent interest rate. To the extent that it is unreasonable to base the rates in Transmittal 873 on this interest rate, it is also unreasonable to base the rates charged under Transmittal 909 on an 18.9 percent interest rate . . . .
>
> . . . GTE is required to set the rates for the two services are [sic] equal after any adjustment to the interest rate that the Commission may require, or demonstrate that any disparity between the two rates is not unreasonable.

(SDO, ¶¶ 12, 13; see also id., ¶ 27.)

GTE's August 28, 1995 Supplemental Direct Case (pp. 3-9) essentially repeated the carrier's earlier Transmittal Nos. 873 and 874 Description and Justification narrations, asserting that the proposed tariff rates were in fact based on the Commission's 11.25 percent authorized rate of return, were arrived at using the standard methodology for establishing interstate access rates, and were nondiscriminatory as between Apollo and GTE Service Corp. In response, Apollo's September 11, 1995 Supplemental Opposition included an analysis by Montgomery Consulting which demonstrated, among other things, that the rates were not constructed based on standard methodology, that certain critical assumptions in the carrier's calculus were not supported, and that the proposed tariff rates to Apollo and GTE Service Corp. were not equivalent. As there shown, particularly in light of Apollo's 1992 lump-sum payment to GTE, a proper equalizing of the rates as between the two parties would require both a refund to Apollo, and an increase in the Transmittal No. 909/918 charge to GTE Service Corp.

GTE's Supplemental Rebuttal answer on the propriety of the rates is characteristically laced with vitriolic assertions of "convoluted distortion of the facts," "specious" analyses and "spurious" claims. (S.R., pp. 19, 26, 27, 29.) When all the arm-waving is ignored, however, at least three incontrovertible facts emerge: First, GTE acknowledges that it attempted to force the earlier commercial arrangements, based on a still-unrationalized 18.9 percent interest rate, into an 11.25 percent rate of return

tariff calculation.[1/] Second, in that effort, the carrier improperly included "nonrecoverable costs," the effect of which was to inflate Apollo's rates, as compared with those for GTE Service Corp. Third, GTE has failed to document (or otherwise support) its use of lower-than-normal "standard" charge factors for maintenance, administration and other expenses -- a failing the Bureau has not tolerated in other contested rate proceedings. Appended hereto as Attachment 1 are further comments by Montgomery Consulting which directly address GTE's rate discussion, and confirm the impropriety of the proposed rates.

II. The Carrier Has Yet To Justify the Injurious Effects of Its Anticompetitive Tariffs On Apollo

Reflecting earlier explanations with respect to Transmittal No. 873/893, Apollo's Supplemental Opposition (at pp. 20-22) identified illustrative collusive, anticompetitive carrier/affiliate conduct directly related to the tariff at issue. It was noted, for example, that GTE automatically gives its affiliate proprietary Apollo new customer information required by the carrier for installations, which GTE Service Corp. immediately uses for its own marketing efforts.

The carrier's Supplemental Rebuttal does not challenge the facts. Neither does it offer any justification for such conduct, which is purely a product of purposefully coordinated carrier/affiliate conduct, and would never be tolerated as proper in an unregulated environment. Instead, the carrier's answer is an imperious dismissal of all such matters: "GTECA has already confirmed that it will not favor one customer on the Cerritos video network -- whether Apollo or Service Corp. -- over the other." (S.R., p. 16.) Given its conduct to date, that hollow assurance is no adequate protection against GTE's future use of

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[1/] In this regard, at footnote 55, of its Supplemental Rebuttal, GTE dismisses the significance of its own earlier documents showing a lower interest rate for its affiliate than for Apollo (See Supplemental Opposition, p. 18 and Attachment 3), suggesting that was simply a "planning" idea not reflected in the actual carrier/affiliate lease agreement. While requested by Apollo, GTE has never disclosed its much-referenced lease agreement with GTE Service Corp. Moreover, it should be noted that GTE's representations to the Commission that such an agreement was reached simultaneously with Apollo's have already been shown to be inconsistent with internal GTE documents obtained in the parties' civil suit discovery.

its facilities control for the benefit of its affiliate vis-à-vis Apollo.[2/]

Apollo further showed that GTE Service Corp. was receiving less than $3,000 in monthly revenues while its costs were necessarily in excess of $80,000 (the proposed tariff lease charge alone) -- a commercially irrational circumstance designed only to prevent Apollo's access to the remainder of the system channels, and potentially to drive Apollo off the system. (Supplemental Opposition, p. 22.) Here, too, GTE's Supplemental Rebuttal is conspicuously silent. The facts are not challenged. And there is no rationale offered for otherwise-unexplainable commercial conduct.

Instead, GTE seeks to discredit all of Apollo's claims here by characterizing other, earlier Apollo assertions as hyperbole. (S.R., pp. 17-18.) GTE refers first to Apollo's early concerns about its bank loan; but the bank has indeed approached Apollo within the past 6 months to restructure its loan arrangement in light of the tariff effects. GTE next alludes to Apollo's earlier recounting of serious technical problems in the carrier's 1994 effort to impose a second billing system on the network for its affiliate, observing that "two billing systems have now been in effect for more than a year." What the carrier fails to add, however, is what has been explained earlier -- that the GTE Service Corp. billing system has created serious problems, including a loss of Apollo's control of billing information for its own pay-per-view programs, with a consequent loss of revenues from pay-per-view events. (See, e.g., Brief on Behalf of Apollo CableVision, Inc., August 15, 1995, p. 6, n. 9.)

In perhaps its most outrageous effort, GTE again suggests that far from worrying about financial effects on Apollo, the Commission should take comfort, for example, in the fact that GTE's takeover of the maintenance functions actually benefitted Apollo. (S.R., p. 18, n. 47.) Specifically regarding maintenance, the point is nonsense. In addition to increased monthly installation costs (earlier handled by Apollo under the maintenance agreement), Apollo has had to absorb more than

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[2/] GTE's further assurance that it is, of course, interested in avoiding preferential treatment "so that channel capacity is fully utilized" (S.R., pp. 16-17) is laughable. As shown at pages 9-10 of Apollo's September 13, 1995 Petition to Deny W-P-C-7097, 7 of GTE Service Corp.'s channels are entirely unused, 4 are used for logos and menus, and the movie channels are viewed by fewer than 20 subscribers per day.

$100,000 in transition costs to date resulting from GTE's contract breach.[3/]

Moreover, the overall adverse effect of the carrier's conduct on Apollo is absolutely undeniable. For calendar year 1993, Apollo's average monthly operating income was $9,150. In the period since the tariffs became effective, however, Apollo has faced an average monthly operating loss of $21,360. (See Attachment 3 hereto.) Moreover, this figure does not include an average monthly GTE charge under the tariff (in dispute) of approximately $10,189 for installations. For GTE here to smugly pretend Apollo has not been injured by its actions is a cynical deception indeed.

It should be emphasized that the citizens of Cerritos have likewise been injured. To remain financially viable, Apollo was required to raise its monthly charges to subscribers in July of this year by $3.00. It is GTE's conduct and no other which required that action; its contract breaches and tariff action have directly resulted in higher charges to Cerritos residents to permit Apollo's survival.

III. GTE Agrees That Its Tariff Exceeds Its Prior and Current Section 214 Authority Vis-à-Vis Its Affiliate

In its Supplemental Opposition (pp. 14-16), Apollo argued that while GTE's initial, current and presently requested Section 214 authority were limited to permitting GTE Service Corp.'s provision of experimental NVCD and VOD services, the tariff was inconsistently unlimited on how the GTE Service Corp. channels could be used. GTE's enigmatic response (S.R., p. 19) creates more questions than it answers.

GTE first asserts that the Commission's 1989 authority -- plainly limited to experimentation -- has expired, and is irrelevant. As to the Bureau's interim Section 214 grant, however, GTE suggests that authorization in no way limits the carrier's tariff allowances. And unless the Commission "limits" GTE's pending Section 214 request (W-P-C-7097) to "provid[ing] video channel service to Apollo and Service Corp.," GTE believes it will have unlimited tariff service discretion for the Cerritos cable facilities. (S.R., p. 19.)

[3/] Appended as Attachment 2 is a document earlier provided Apollo's lender, which indicates some of the unrecovered expenses Apollo has faced as a result of GTE's conduct.

It is true that the 1989 Section 214 authority has expired. The Bureau's interim grant, however, was merely an extension of permission temporarily to continue services initially authorized. And on its face, the pending GTE application for permanent authority implies that the carrier seeks permission only to maintain in-place operations vis-à-vis GTE's affiliate. At this point, therefore, there is no underlying Section 214 authority for GTE to serve GTE Service Corp. in any fashion other than in the "experimental" mode initially authorized. To the extent the tariff proposes more, it is patently unlawful.

GTE's own pleading offers the appropriate resolution of the problem, if a simple rejection of the tariff is beyond the Bureau's will:

> If the Commission limits GTECA's Section 214 authority to continue to provide video channel service to Apollo and Service Corp. than [sic] GTECA will modify its tariff accordingly.

(S.R., p. 19.) The Bureau should make clear that the current, interim Section 214 authority is indeed so limited, and direct the tariff "modification" Apollo has suggested. (Supplemental Opposition, pp. 24, 25, 26.)

As to GTE's permanent Section 214 application, the carrier should be directed to clarify the scope of authority it truly seeks. To the extent the carrier here (and in the California civil litigation) maintains that neither it nor its affiliate "competes" with Apollo, GTE is understandably reluctant directly to state that it seeks authority to provide all forms of cable service on the GTE Service Corp. portion of the Cerritos cable system. If, however, that is the carrier's intent, and an enlarged scope of authority is what it seeks, that matter should at least be made clear, so that any final Commission action on the pending Section 214 application will be fully informed.

IV. Plain Disparities Between The Proposed GTE Tariff Service Service Corp. Tariff and Prior Contracts Are Confirmed

At pages 9-16 of its Supplemental Rebuttal, GTE asserts that Apollo has not demonstrated that Transmittal 874/909/918 is in fact inconsistent with the parties' earlier contracts, for the most part restating positions taken in GTE's earlier pleadings. Apollo's showings otherwise, found at pages 8-13 of its Supplemental Opposition (and as to GTE's arguments concerning Apollo's rights to use of the channels being tariffed to GTE

Service Corp., at pages 9-20 of Apollo's Reply Comments, filed September 30, 1994), will not be repeated here.

Concerning GTE's new position on the Apollo/GTE Service Corp. non-competition provision, however, brief comment is warranted. In its Supplemental Opposition (pp. 23-24), Apollo suggested (if the tariff was not rejected outright) the insertion of wording to reflect GTE Service Corp.'s non-competition agreement with Apollo, just as the tariff already reflected GTE's similar agreement.[4/]

GTE does not dispute either that the Apollo/GTE Service Corp. non-competition provision was part of the carrier-induced complex of agreements, or that the tariff's current form would permit what the contract forbade.[5/] Instead, GTE addresses the "true perversity" of Apollo's position by noting that, while the Apollo/GTE Service Corp. non-compete clause "specifically permits Service Corp. to provide video-on-demand (VOD) and near video-on-demand (NVOD) services", Apollo's suggested tariff wording does not -- a result expressly in conflict with the pre-existing contract". (S.R., p.16.)

In fact, the contract provision in this regard states, in relevant part:

> . . . GTESC . . . shall not be prevented by this [non-competition] provision

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4/ In a complete non-sequiter, GTE argues that Transmittal 873, Section 18.4(a)(3), does not materially differ from its non-competition agreement with Apollo. (S.R., p. 13.) Apollo has not argued otherwise, except to the extent its affiliate's activities represent indirect competition by the carrier.

5/ It should be stressed that GTE nowhere disputes Apollo's claim that the carrier seeks to establish GTE Service Corp. as a competitor to Apollo in Cerritos, or forswears such an objective. While offering diversionary rhetoric about the meaning of the parties' non-competition contract provision, the closest thing to response is found in one sentence (S.R., p.15):

> [I]n another proceeding, the City [of Cerritos] has already demonstrated Service Corp. is not a competitor, even within the broad terms of the 1992 Cable Act. [Footnotes omitted.]

GTE hastens to add that the proceeding referred to will not actually determine the competition issue. (S.R., p. 15, n.38.)

> from complying with any obligation imposed on GTE by the FCC, other regulatory bodies or the courts, including but not limited to, Near Video On Demand, Video On Demand or other advanced forms of programming which may become available as a result of technological advances.[6/]

Contrary to GTE's characterization, therefore, the parties' contract permitted GTE Service Corp. to provide NVOD and VOD services if necessary to "comply[] with [an] obligation imposed on GTE" by any regulatory body or court. There is no such "obligation" here; neither the FCC nor the California PUC nor any court have required a continuation of GTE Service Corp.'s services -- "experimental" services GTE had already publicly stated were to be concluded in 1993, and in which GTE had no further interest. (See Supplemental Opposition; pp. 9-10.)

V. The Case For Rejecting The Tariffs As Facially Unlawful Remains Strong

A. On the lawfulness of abrogating its earlier agreements with Apollo, GTE's five restated "points" remain wrong

By way of introduction -- but in answer to no arguments in Apollo's Supplemental Opposition -- GTE repeats in summary form certain of its earlier positions on its ability lawfully to abrogate the earlier Apollo/GTE contracts through the Commission's tariff process. (S.R., pp. 2-5.) Simply abbreviating them makes the assertions no less wrong, however.

Point 1. GTE: The Commission "exercised its Title II jurisdiction over the Cerritos network time and time again." (S.R., pp. 2-3.) Facts: The Commission ruled Section 214 authority was required; it never ruled tariffs were required, and stated that illustrative tariffs were unnecessary for a grant of the Section 214 application. Law: While Section 214 authority may be granted for private carriage service facilities, tariffs are not required. (See letter dated June 29, 1995, from Edward P. Taptich to A. Richard Metzger, Jr., pp. 6-8.)

6/ Enhanced Capability Decode Agreement, ¶ 2(d).

Point 2. GTE: Apollo's argument that the service here is common carriage is "quite specious", given (a) "the Commission's rejection of this argument in its 1989 Section 214 action, and (b) "the Bureau's contrary ruling" concerning Transmittal No. 873 in July of 1994. (S.R., p.3.) Facts: The Commission's 1989 Section 214 decision did not address the common vs. private carrier issue; the Bureau's 1994 ruling, which refused to reject the tariff on that basis, but contained no reasons for its judgment, is on appeal to the Commission. Law: See Apollo's "Application for Review", August 1, 1994; "Supplement to Application for Review," September 12, 1995.[2/]

Point 3. GTE: On expiration of the cross-ownership waiver in July 1994, GTE was required to tariff network usage by both Apollo and GTE Service Corp. (S.R., pp. 3-4.) Facts: The Commission never compelled a GTE tariff filing, and GTE's own internal documents confirm that its decision to do so was a voluntary business choice among other available alternatives. Law: The Ninth Circuit made clear that, while questions existed concerning GTE's Section 214 authority to serve GTE Service Corp., any earlier D.C. Circuit concerns in that regard

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[2/] Ironically, GTE's presentation at page 29 of its Supplemental Rebuttal reinforces Apollo's position that the tariff facilities and services are not an indiscriminate holding out to the public. In defending the propriety of its rates, the carrier states (S.R., pp. 28-29):

> . . . the assessment of cost elements [here] are reflective of facilities dedicated to the use of a single customer. . . . The GTE Telephone Operating Companies have consistently used this method to recover costs that are directly tied to a particular customer's service request when the underlying facilities are dedicated solely to that customer. . . . . [Emphasis added.]

In this connection, GTE has repeated a knowing misstatement once more: that "Apollo readily admits" that usage of the Cerritos facilities was required to be provided by tariff. (S.R., p.4, n.8; compare GTE's Motion for Declaratory Ruling, February 8, 1995, p. 5. See, however, Apollo's Opposition to that Motion, February 23, 1995, p. 2, n. 4.) While there are few circumstances where an admonition for pleading excess is necessary, it would be entirely appropriate here.

concerning Apollo were moot. GTE California, Inc. v. FCC, 39 F. 3d 940, 946, n. 5 (9th Cir. 1995).

Point 4. GTE: Once effective, the challenged tariffs governed use of the system facilities by Apollo and GTE Service Corp. (S.R., p.5.) Facts: While effective pending conclusion of this investigation, no final Commission ruling has occurred on the propriety of the tariffs, and they are subject to accounting and refund requirements. Law: Ultimate compliance with the tariff provisions is dependent on a Commission determination of their lawfulness.

Point 5. GTE: This case is identical to, and governed by United Video, Inc., 49 F.C.C. 2d 878 (1974), recon. denied, 55 F.C.C. 21 516 (1975). (S.R., p.5.) Facts and Law: See Brief on Behalf of Apollo CableVision, Inc., August 15, 1994, pp. 2-19; Opposition to Direct Case on Behalf of Apollo CableVision Inc., September 15, 1994, pp. 3-17; Reply Comments on Behalf of Apollo CableVision, Inc., September 30, 1994, pp. 3-9.

B. GTE's failure to satisfy the "substantial cause" test is confirmed

In its Supplemental Opposition (at pp. 6-7), Apollo noted that the Commission's recent discussion in Competition in the Interstate Interexchange Marketplace, 10 F.C.C. Rcd 4562 (1995) was recent support for its position that, at a minimum, GTE was required to demonstrate "substantial cause" for any material differences between its tariffs and the parties' earlier agreements. Ignoring that portion of the Commission's analysis cited by Apollo, GTE argues the decision's holding to be inapplicable because the "factual predicate" in Interstate Interexchange is absent here. Apollo is also faulted for not having shown that GTE is a nondominant carrier, that the service involved here is subject to streamlined regulation, or that Apollo's continued use of the Cerritos facilities under contract was permissible. (S.R., pp. 5-7.)

Apollo demurs. Whatever fine distinctions GTE may here urge, the Commission's fundamental interpretation in Interstate Interexchange of the RCA Americom Decisions, as they relate to the reasonableness of tariffs under Section 201(b) of the Communications Act, remains:

> [A] dominant carrier's tariff revisions altering material terms and conditions of a long-term service tariff will be considered reasonable only if the carrier can make a showing of substantial cause for the revisions.

77 R.R. 2d at 259. That principle is plainly applicable here.

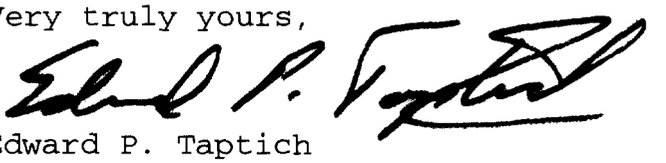
In a reversal of GTE's earlier position in this connection -- that the "substantial cause" test simply doesn't apply -- GTE now argues that such a showing here "has been readily made." (S.R., p. 7) In explanation, GTE states only that the "substantial cause" test is satisfied by the "fact" that the tariffs were required "to bring the parties into compliance with the Act and the Commission's Rules." (Id., p. 7.) GTE misperceives the purpose for the "substantial cause" test, however. To meet that test, the carrier is not asked to demonstrate that the filing of a tariff was required. Rather, the obligation is to justify any material differences between the tariff and the terms of the parties' agreements. It is far from "defy[ing] logic" (S.R., p.7) to assert that GTE has not even attempted such a showing here; it is indeed a fact.

In its Supplemental Rebuttal (pp. 9-18), GTE seeks to avoid the consequences of that failure by repeating earlier assertions that there are no material differences between its tariffs and the contracts. Thus, GTE again contends Apollo had no right to accede to use of GTE Service Corp.'s channels (S.R., pp. 10-13), and essentially repeats its earlier contention that Apollo's non-compete agreement with GTE Service Corp. is irrelevant here. (S.R., pp. 13-15.)

Apollo has responded to both matters earlier, and will not repeat its views here. What does bear noting, however, is the continued irony of GTE's position -- which assumes an arms-length relationship between the carrier and its affiliate -- being presented in pleadings filed for both

parties, and whose combined operations in Cerritos are so intimately intertwined.

Very truly yours,



Edward P. Taptich

cc: Geraldine Matise
David Nall

Counsel for the parties to
CC Docket No. 94-81.

Analysis of GTE Telephone Companies' Supplemental Rebuttal Case
Federal Communications Commission, CC Docket No. 94-81
September 27, 1995

W. Page Montgomery
Montgomery Consulting

At the request of Apollo CableVision, Inc. (Apollo) we reviewed the "Supplemental Rebuttal of GTE" filed September 21, 1995 in CC Docket 94-81, the Federal Communications Commission's investigation of the Cerritos tariff.[1] Despite the rhetorical tone of GTE's submission and its repetitious treatment of the facts underlying the submission of the Apollo and GTE Service Corp tariffs, GTE actually confirms most of the core findings in our September 11, 1995 analysis. For example, GTE confirms that the identity between the tariff charge for Service Corp. and the prior lump sum prepayment by Apollo is not sheer coincidence. GTE admits that the Service Corp. tariff was force-fitted to match the equivalent of the monthly value of Apollo's prepayment. Supplemental Rebuttal, p. 24.

At least two significant points should be clearly understood, in response to the specific arguments presented at pages 24-35 of GTE's Supplemental Rebuttal:

"Nonrecoverable costs." First, GTE confirms what we said about its "nonrecoverable" annual cost element. We determined that the "nonrecoverable costs" in GTE's study including depreciation in excess of the regulatory prescribed rates, and recovery of the so-called "writeoff" of investments transferred to GTECA's regulated accounts. GTE confirms that it is recovering depreciation in excess of prescribed amounts[2] and never addresses whether the remainder of the 12-year annuity payment also recovers all or part of the "write-off." Despite this critical departure from accepted ratemaking treatments, GTE has never:

1. Documented the actual annuity calculation;
2. Demonstrated that the "writeoff" of part of the investment is not, in fact,

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[1] GTE Telephone Companies' Tariff FCC No 1, Transmittals 873, 874, 909 and 918.

[2] Supplemental Rebuttal, p. 28.

recovered by the annuity; or

3. Explained why the extra depreciation charges should be recoverable only through these tariffs.

As we noted, most of the plant costs that would not be recovered at the end of the 12 year period consist of conduit plant, a category with a remaining life of 45 years. Is GTE claiming that the conduit plant wi l cease to be used at the end of the 12 year period? Cerritos, California is a well-developed community with a growing number of residential and business locations. Is this conduit plant not likely to be used beyond the 12 year period to provide either regulated or nonregulated services? GTE never says. Similarly, is the FCC to believe that at the end of the twelve year period, some form of video service will not continue to be provided to Cerritos customers, either by a GTE-affiliated entity or another provider? GTE implicitly asks the Bureau to accept the assumption that the useful life of the plant will cease concurrent with the expiration of the current service period, an assumption for which there is no support and no logical basis.

GTE's claim that Apollo should be paying $9,791 per month more than the amount represented in the lump sum,[3] is without foundation because GTE calculates the charge simply by adding back investment that was "written off" without changing the so-called non-recoverable cost element that GTE used to reimburse itself for the value of the reduced plant costs booked to regulated accounts.[4]

When one peers through the rhetorical haze in GTE's Supplemental Rebuttal, it is clear that GTE did not follow standard rate making practices regarding the "nonrecoverable" costs,[5] and that GTE has deigned not to document the calculations underlying it.

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[3] Supplemental Rebuttal, p. 25 and Attachment A.

[4] See Attachment A, lines 1-9 and line 18.

[5] The unique "make-whole" approach that GTE elected with respect to non-recoverable costs also would appear to belie its claim that the Apollo and Service Corp. tariffs constitute a "general offerings." Supplemental Rebuttal, p. 3. How can a service that utilizes all of the available capacity and is allegedly priced to recover all future costs

Annual charge factors. Second, the September 21 filing underscores the lack of relevant information in GTE's prior tariff transmittals involving both Apollo and Service Corp. GTE's original cost support for Transmittals 873 and 874 might have been sufficient documentation for a routine, non-controversial tariff filing. In this case, however, the overall relationship between GTECA's ratemaking costs, and the rates for Apollo and Service Corp. are designated issues for a docketed Commission investigation. The tariff transmittals are neither routine nor lacking in controversy. Nevertheless, GTE has elected not to meaningfully supplement the original cost support except through its verbal, non-quantified descriptions of how the rates were developed.

For example, GTE claims that the administration and maintenance charge factors of 9.33% and 3.95%, respectively, represent a lower than normal annual factor. However, GTE has not documented the development of these factors. Nor has GTE provided its allegedly "uniform" charge factors used in other interstate tariff filings. Nothing in any of GTE's prior tariff support materials relating to any cost development for the Apollo or Service Corp. tariffs documents the development of these (or indeed any other) annual charge factors. GTE cites a prior tariff transmittal as an example that it uses higher "standard" charge factors, but also does not specify what charge factors were used in that filing. Nor does it document what it claims are its "standard" charge factors for maintenance, administration or other expenses.

Due to these omissions, GTE has not shown that the charge factors it utilized reflected the actual conditions of, and cost causation attributable to, GTECA's tariffed service to Apollo. We referred to GTE's "wholesale video service" tariff.[6] This tariff does not suggest that GTE accounted in any way for the actual costs that GTECA is likely to incur with respect to Apollo. The GTECA administration and maintenance factors for

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(even those normally recoverable beyond the service period) be a "general" offering?

[6] GTE is correct that we miscalculated the charge factors for wholesale video transport services in several other GTE jurisdictions. Supplemental Rebuttal, p. 32. However, this point was merely a comparison that we used with respect to the main points of our September 11 analysis regarding GTE's lack of economic justification for the charge factors it used in Transmittal 873 and 874.

Transmittals 873 and 874 equal 13.28%. The charge factors used for the wholesale transport video service are labelled as "maintenance" and "administration/marketing." It is undisputed by GTE that GTECA will incur no marketing costs whatsoever either with respect to Apollo or Apollo's cable service subscribers. Yet, the charge factors for maintenance plus administration and marketing used for various GTE areas in the wholesale video transport cost studies are sometimes lower (e.g., Kentucky, 11.88%) and sometime higher than 13.28% (e.g., Michigan, 14.19%). This indicates that GTE used only average GTECA charge factors in the Apollo tariff, thereby failing to account for GTECA's essentially passive role with respect Apollo's own marketing and other administrative activities for its cable TV service [7]

As the maker of the tariffs, only GTE can supply this information. If the Bureau and interested parties are not afforded access to all of the information needed to determine the lawfulness of the tariffs, they should be deemed to be unlawful. GTE's failure in this regard, coupled with its concession that it departed from standard ratemaking practices by including "nonrecoverable costs" and then arbitrarily split these costs between Apollo and GTE's own affiliate Service Corp. could well be the basis for the rejection of all of the tariff transmittals.

Likewise, only if the Bureau were to conclude that the mere similarity of rate levels for Apollo and Service Corp. is sufficient to eliminate any rate discrimination could GTE's case succeed. Of course, the approximate equivalence of the two entities' rate levels could be confirmed merely from the tariffs themselves; cost support would have been unnecessary. Because it is quite clear by GTE's own concession that the cost study was concocted to achieve a pre-determined result, however, the more appropriate finding is that GTE has failed to prove the Cerritos tariffs are just and reasonable.

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[7] This point also illustrates the logical inconsistency of GTE's cost study. If it were appropriate to use average charge factors, then it would also be appropriate to recover from Apollo's rate only the depreciation and investment costs over the prescribed lives of the plant accounts — which GTE circumvents by using the "nonrecoverable" cost additive. In other words, GTE has mixed cost methods, which are "consistent" only in that the charge factors and nonrecoverable cost both serve to raise Apollo's proper tariff rates.

EXAMPLES OF COSTS WHICH HAVE NOT CEASED AND LOSSES WHICH HAVE BEEN OCCURRING SINCE GTE'S TARIFF FILING

* Since 1990 when GTESC launched the Center Screen product, Apollo has been suffering a loss in Premium channel revenue. Specifically, from Feb. 1990 to May 1995, the premium channel subscriptions have declined from 13,481 to 7,133 (an average decline of 104 per month). At an average retail price of $9.28, that indicates a monthly decline in Apollo's Premium service revenue of $965. Prior to the tariff, GTE compensated Apollo for some of these losses, however, GTESC's Center Screen continues to operate, causing continued losses to this day.

* Building expense. Apollo leased Suite #104 of 13100 Alondra Blvd., adjacent to Suite #102 (home of GTE Center Screen prior to the tariff, and home of GTECA, GTE Main Street, and GTE Center Screen now). This location was leased with a large square footage so that a warehouse, headend and technical staff could be accomodated. The lease is for a long term, as are the agreements between GTE and Apollo. Since GTE has attempted to supplant our long-term agreements by filing a tariff, Apollo has been left with the lease of a large building, costing in excess of $10,000. per month. This much space is not necessary under the tariff scenario. Apollo only needs room for a customer service and administrative department now that GTE has taken over maintenance and installations, and we should be able to rent such a space for approximately half the cost of what we currently pay. Unfortunately, the tariff does not supplant the long-term lease between Apollo and the building owner

* Apollo no longer receives any reimbursement from GTE for Customer Service Support, although the expenses should be shared between the companies. All calls, except for Center Screen billing-related calls, are handled by Apollo under the current situation. Although GTESC benefits from use of half the network, it does not have to reimburse Apollo for costs related to phone and administration in handling system outages, installations, appointment scheduling, complaints, after hours answering service calls, etc... It is Apollo's belief that half these costs should be borne by GTESC who benefits from use of half the network. Unfortunately, the tariff provides GTESC with a clear advantage in this matter, causing Apollo to be the sole provider of such services.

* Apollo should receive reimbursement for marketing expenses from GTESC. GTESC obtains a new customer every time Apollo obtains one through Apollo's marketing efforts. GTECA has been installing TIM Units as a courtesy to GTESC ever since the tariff was filed. When Apollo transmits a work order to GTECA, there is no indication that Apollo's customer information is protected from GTESC's use. On the contrary, Don Bache of GTESC has signed an affidavit stating that GTESC only markets to Apollo's subscribers. GTESC has clearly been favored in the tariff filing which has been allowing a sort of parasite marketing tactic to take place at Apollo's expense.

* Apollo has been and will continue to incur expenses related to legal issues arising with retransmission consent agreements. The tariff allows Apollo a limited number of channels, whereas, our long-term agreements with GTE allowed for our current lease of the entire bandwidth. The lack of channel capacity which Apollo is still being made to suffer, is impeding Apollo's ability to meet retransmission consent channel carriage requirements.

* In addition, the same lack of channel capacity inhibits Apollo's ability to add new services which subscribers have been requesting. There is an indisputable correlation between revenue growth and subscriber satisfaction. If we cannot satisfy viewers by adding new services, we will lose them to competitors, and we will have a difficult time raising rates to meet our rising costs.

6/4/95

Apollo CableVision, Inc.

INCOME STATEMENT

(Calendar Year 1993)

	01/31/93	02/28/93	03/31/93	04/30/93	05/31/93	06/30/93	07/31/93	08/31/93	09/30/93	10/31/93	11/30/93	12/31/93	TOTAL 12 MOS. ENDED 12/31/93
REVENUE	280,801.83	277,380.80	290,899.25	284,286.04	284,794.83	286,782.78	292,136.32	279,386.56	293,965.09	279,880.63	294,751.99	283,636.28	3,428,702.40
DIRECT SERVICE COSTS	93,087.47	91,391.76	104,317.50	97,700.41	95,535.42	101,417.95	82,607.63	91,681.62	100,860.35	80,552.10	98,878.74	89,008.22	1,137,139.17
GROSS PROFIT	187,714.36	185,989.04	186,581.75	186,585.63	189,259.41	185,364.83	209,528.69	187,704.94	193,104.74	189,328.53	195,773.25	194,628.06	2,291,563.23
SERVICE/TECHNICAL COSTS	38,851.62	52,121.66	40,148.27	41,628.39	39,799.04	36,064.64	38,490.52	49,747.50	66,421.43	33,359.26	52,142.27	38,499.76	527,274.36
SALES/MARKETING COSTS	3,847.62	2,934.15	3,498.02	3,250.57	1,670.13	4,606.05	2,751.06	1,903.20	861.92	3,476.44	2,043.48	1,506.22	32,348.86
CUSTOMER SERVICE COSTS	41,777.93	25,502.58	26,489.29	27,744.21	27,975.04	27,125.21	27,585.62	37,785.27	38,234.27	24,887.99	24,072.66	20,268.97	349,428.44
GENERAL & ADMINISTRATIVE COSTS	88,597.72	94,386.56	106,506.65	111,918.41	121,700.81	41,651.60	112,531.92	118,738.37	122,843.28	80,051.48	135,473.82	115,347.02	1,249,747.64
SYSTEM INCOME (LOSS)	14,640.07	11,044.09	9,939.52	2,044.05	(1,885.61)	75,917.33	28,189.57	(20,469.40)	(35,256.16)	47,553.36	(17,858.98)	18,006.09	132,763.93
CORPORATE OVERHEAD	2,077.32	2,525.45	2,124.51	3,526.87	2,206.86	1,990.30	2,093.18	1,945.98	1,318.19	1,317.63	1,194.29	620.10	22,940.68
OPERATING INCOME (LOSS)	12,562.75	8,518.64	7,815.01	(1,482.82)	(4,092.47)	73,927.03	26,096.39	(22,415.38)	(36,574.35)	46,235.73	(19,153.27)	18,385.99	109,823.25
OTHER INCOME AND EXPENSE	(188.88)	(127.24)	(29.39)	(30.36)	(68.27)	(107.37)	21.89	(32.17)	(22.27)	(19.58)	(2.00)	6.15	(599.49)
NET PROFIT (LOSS) FOR THE PERIOD	12,373.87	8,391.40	7,785.62	(1,513.18)	(4,160.74)	73,819.66	26,118.28	(22,447.55)	(36,596.62)	46,216.15	(19,155.27)	18,392.14	109,223.76

Apollo CableVision, Inc.
INCOME STATEMENT

(July 1994 - August 1995)

	07/31/94	08/31/94	09/30/94	10/31/94	11/30/94	12/31/94	01/31/95	02/28/95	03/31/95	04/30/95	05/31/95	06/30/95	07/31/95	08/31/95
REVENUE	278,414.53	276,292.41	286,701.93	276,728.79	282,517.37	283,595.89	273,915.92	281,933.67	272,958.62	281,709.12	290,145.59	289,841.64	299,368.27	307,540.68
DIRECT SERVICE COSTS	87,691.95	94,064.57	94,394.57	91,037.76	91,694.80	89,584.80	94,556.38	91,578.73	91,404.99	97,175.83	94,692.41	94,534.47	91,538.33	104,870.32
GROSS PROFIT	190,722.58	182,227.84	192,307.36	185,691.03	190,822.57	194,011.09	179,359.54	190,354.94	181,553.63	184,533.29	195,453.18	195,247.17	207,829.94	202,670.36
SERVICE/TECHNICAL COSTS	25,097.17	43,517.20	27,578.50	10,121.03	13,681.56	13,624.89	13,716.50	7,633.64	7,561.78	7,557.71	7,573.33	7,506.13	7,609.92	4,916.78
SALES/MARKETING COSTS	2,410.65	1,734.06	1,640.28	1,526.63	1,241.93	3,420.19	1,326.93	1,163.93	1,753.70	1,141.93	3,302.57	2,530.15	1,773.90	1,128.93
CUSTOMER SERVICE COSTS	26,040.62	23,330.34	35,842.75	24,408.30	24,871.16	25,456.91	28,745.76	28,022.88	33,536.47	26,934.36	25,881.28	26,989.00	25,951.32	25,914.48
GENERAL & ADMINISTRATIVE COSTS	169,798.85	166,886.51	286,914.47	156,651.11	146,443.02	156,089.55	152,438.65	151,252.87	162,081.60	174,893.58	144,766.31	147,081.59	174,009.14	174,614.69
SYSTEM INCOME (LOSS)	(34,624.71)	(53,240.27)	(159,668.04)	(7,016.04)	4,584.90	(4,580.45)	(16,868.30)	2,281.62	(23,379.92)	(25,994.29)	13,929.69	11,140.30	(1,514.34)	(3,304.52)
CORPORATE OVERHEAD	50.33	76.93	70.21	29.67	65.61	321.31	80.17	184.81	32.13	27.87	357.87	135.37	200.96	206.71
OPERATING INCOME (LOSS)	(34,675.04)	(53,317.20)	(159,738.85)	(7,045.71)	4,519.29	(4,901.76)	(16,948.47)	2,096.81	(23,412.05)	(26,022.16)	13,571.82	11,004.93	(1,715.30)	(4,111.23)
OTHER INCOME AND EXPENSE	(12.22)	49.03	(1,115.91)	74.52	67.63	22.01	79.14	54.38	78.20	74.12	119.32	102.01	129.65	(107.08)
NET PROFIT (LOSS) FOR THE PERIOD	(34,687.26)	(53,268.17)	(160,854.76)	(6,971.19)	4,586.92	(4,879.75)	(16,869.33)	2,151.19	(23,333.85)	(25,948.04)	13,691.14	11,106.94	(1,585.65)	(4,218.31)